(8)

No. 91-480

In The

Supreme Court of the United States

October Term, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

Petition For A Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

KAREN E. FORD*
GREGORY R. MEYER
LITTLER, MENDELSON, FASTIFF & TICHY
A PROFESSIONAL CORPORATION
650 California Street
20th Floor
San Francisco, California 94108-2693
(415) 433-1940

Attorneys for Respondent
El Capitan Development Company
*Counsel of Record

October 16, 1991

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

1. WHETHER THE CALIFORNIA MECHANIC'S LIEN PROCEDURE EMBODIED IN CALIFORNIA CIVIL CODE SECTION 3111, WHICH CREATES AN ADDITIONAL STATE CAUSE OF ACTION FOR THE COLLECTION OF CONTRIBUTIONS OWED TO EMPLOYEE BENEFIT PLANS, "RELATES TO" AN EMPLOYEE BENEFIT PLAN AND IS CONSEQUENTLY PREEMPTED BY ERISA.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

STATUTES AND CODES

No. 91-480

In The

Supreme Court of the United States

October Term, 1991

CARPENTERS SOUTHERN CALIFORNIA ADMINISTRATIVE CORPORATION,

Petitioner,

v.

EL CAPITAN DEVELOPMENT COMPANY,

Respondent.

Petition For A Writ Of Certiorari To The California Supreme Court

BRIEF IN OPPOSITION

Respondent El Capitan Development Company ("El Capitan") respectfully requests this Court to deny the writ of certiorari prayed for by Petitioner Carpenters Southern California Administrative Corporation ("CSCAC").

I

OPINIONS BELOW

The relevant opinions below are set forth at Page 1 and Appendices A, B, C and D of Petitioner Carpenters

Southern California Administrative Corporation's Petition for a Writ of Certiorari to the California Supreme Court ("Petition").

II

JURISDICTION

The relevant jurisdictional provisions are set forth at Petition, page 2. This opposition is timely filed under 28 U.S.C. § 2101 and Rule 15.2 of this Court.

III

STATUTORY PROVISIONS

The relevant statutory provisions are set forth at Petition, page 3 and Appendix E.

IV

STATEMENT OF THE CASE

Consistent with well-established ERISA preemption analysis, the California Supreme Court has properly held that the trust fund mechanic's lien created under California Civil Code Section 3111 is preempted by Section 514(a), 29 U.S.C. § 1144(a), of the Employee Retirement Income Security Act of 1974 ("ERISA").

California Civil Code Section 3111 creates a funding mechanism for employee pension and welfare benefit plans by permitting such plans to obtain a lien on real property in an amount equal to the fringe benefit contributions which are claimed to be due the trust funds under collective bargaining agreements. The mechanic's liens authorized by Section 3111 are specifically designed

to affect employee benefit plans. Section 3111 expressly refers to "trust fund[s] established pursuant to a collective bargaining agreement" and provides to such funds a mechanic's lien remedy not provided by Congress.

This action was instituted by CSCAC to foreclose liens filed pursuant to the California Civil Code upon property owned by El Capitan. El Capitan used the services of a company called Pacific Southwest Framing to perform carpentry work on property located in Bakersfield, California. CSCAC sought to foreclose a lien on the property based on fringe benefit contributions it alleges are due from a company called John Hall Enterprises, Inc. The complaint relies upon a collective bargaining agreement executed on behalf of John Hall Enterprises, Inc. and contends that John Hall Enterprises and Pacific Southwest Framing, which performed work on El Capitan's property, are a single employer. El Capitan has never been a signatory to a labor agreement with the Carpenters Union.

After numerous procedural hurdles, the California Supreme Court issued its decision on June 20, 1991. The court held that Section 3111 was preempted by ERISA. Its decision was consistent with the opinions of numerous federal and state courts which have addressed similar issues. In a well-reasoned opinion, the California Supreme Court adhered to the clearly defined preemption principles set forth in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S.Ct. 1549 (1987). Consequently, the petition for writ of certiorari must be denied.

V

REASONS FOR DENYING THE WRIT

A. Federal And State Courts Have Uniformly Held That State Mechanic's Lien Statutes Are Preempted by ERISA.

Contrary to Petitioner's assertion, federal and state trial and appellate courts have uniformly held, since this Court's decision in *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41, 107 S. Ct. 1549 (1987), that state mechanic's lien statutes which supplement or supplant the civil enforcement scheme developed under ERISA are preempted.[1] *See e.g., Sturgis v. Miller*, ___ F.2d ___ (U.S.C.A. No. 90-15054 (9th Cir.) (Sept. 3, 1991)); *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir. 1990), *cert. denied*, ___ U.S. ___, 110 S. Ct. 3272 (1990); *McCoy v. Massachusetts Institute of Technology*, 760 F. Supp. 12 (D. Mass. 1991); *Edwards v. Bethlehem Steel Corp.*, 554 N.E.2d 833 (Ind. App. 1990); *Prestridge v. Shinault*, 552 So.2d 643 (La. Ct. App. 1989); *Plumbers Local No. 458 Holiday Vacation Fund v. Howard Immel, Inc.*, 151 Wis. 2d 233, 445 N.W.2d 43 (1989).

---

[1] In its argument asserting that there is a conflict among the courts regarding the application of ERISA Section 514(a), 29 U.S.C. § 1144(a), to trust fund mechanic's lien statutes, Petitioner relies almost exclusively on decisions rendered prior to *Pilot Life*. In light of the expansive interpretation given to the preemptive effect of Section 514(a) in *Pilot Life*, however, these cases are of limited precedential value. Furthermore, the only post-*Pilot Life* decision cited by Petitioner, *Sheet Metal Workers Pension Plan v. Columbia Savings & Loan Association*, 221 Cal. App. 3d 21 (1990), is completely devoid of any discussion or rationale supporting its holding and was explicitly disapproved by the California Supreme Court.

Each of these decisions has provided clear guidance regarding the preemptive effect of ERISA on state mechanic's lien statutes almost identical to the trust fund lien procedure created by California Civil Code Section 3111. In each instance, the courts have held that in light of *Pilot Life* and its progeny, they were compelled to conclude that the mechanic's lien statutes were preempted by ERISA.

For example, in *Sturgis v. Miller*, ___ F.2d ___ (U.S.C.A. No. 90-15054 (9th Cir.) (Sept. 3, 1991)), the Ninth Circuit, in reviewing the same statute under consideration in the instant action, held that Section 3111 was preempted by ERISA. The court based its holding on the fact that Section 3111 "relates to" ERISA. The court stated:

> [S]ection 3111 contains a clear reference to and connection with ERISA. It singles out employee benefit plans for the specific purpose of according them lien rights on real property to collect delinquent employer contributions. . . . There can be no doubt that Section 3111 accords ERISA plans a unique procedural benefit by conferring upon them special mechanic lien rights to collect delinquent contributions. Accordingly, ERISA preempts Section 3111.

Similarly, in *Iron Workers Mid-South Pension Fund v. Terotechnology Corp.*, 891 F.2d 548 (5th Cir. 1990) *cert. denied*, ___ U.S. ___, 110 S.Ct. 3272 (1990), the Fifth Circuit held that a Louisiana statute permitting employee benefit plans and fiduciaries to assert a claim for amounts owed under collective bargaining agreements against owners of property on which an employer had worked, was preempted by ERISA.

In *Iron Workers*, an employee benefit trust sued a contractor who had failed to make contributions to a benefit plan as required by a collective bargaining agreement. The trust also sought to enforce liens which it had filed under the Louisiana Private Works Act, against the owner of the property on which the contractor had performed the work.

Based on the reasoning of *Pilot Life*, the court held that the statute was preempted by ERISA. It stated that:

> By its terms the Private Works Act relates to employee benefit plans. It also purports to regulate such plans, because it provides a supplemental enforcement mechanism to those provided by Congress. It does not specifically require that certain terms be included in a plan, but it does purport to regulate the conditions under which the terms of a plan can be enforced by creating an additional entity that can be liable for contributions to the plan.

Iron Workers, 891 F.2d at 553.

The court concluded that because ERISA's civil enforcement provisions specifically provide for a cause of action by a fiduciary to enforce the provisions of ERISA with regard to employer contributions, 29 U.S.C. § 1132(a)(3) (ERISA § 502(a)(3)), the Private Works Act was preempted as an attempt to supplement the exclusive civil remedies provided by ERISA. *Iron Workers*, 891 F.2d at 555.

A similar conclusion was reached in *McCoy v. Massachusetts Institute of Technology*, 760 F.Supp. 12 (D. Mass. 1991), where a federal district court held that a Massachusetts mechanic's lien law was preempted by ERISA.

Following the guidance of *Pilot Life* regarding the "expansive sweep of the preemption clause," the court reasoned that because the mechanic's lien statute "creates a whole new class of liable parties – property owners" against whom trust funds could seek a remedy, the statute was preempted by ERISA. *McCoy*, 760 F.Supp. at 16.

In addition to the opinions rendered by the federal courts, the decisions of numerous state courts also illustrate the uniformity with which the judiciary has addressed the issue presently under consideration. In *Prestridge v. Shinault*, 552 So. 2d 643 (La. Ct. App. 1989), a trust fund sought to enforce liens against a property owner under the same Louisiana Public Works Statute at issue in *Iron Workers*. The court reached a similar conclusion regarding preemption as was reached in *Iron Workers*. The court's decision preempting the statute was based on its "understanding of ERISA's preemptive force and [its] interpretation of *Pilot Life*."

The *Prestridge* court stated that "the lien claim depends on the validity and consequences of a collective bargaining agreement that establishes an ERISA benefit plan. The failure of one party to make contributions results in the denial of benefits to the other. Exclusive federal remedies are provided, and these do not include state-law laborers lien rights against nonparties to the agreement." Thus, the state law was preempted by ERISA. *Prestridge*, 552 So. 2d at 647-48.

In *Edwards v. Bethlehem Steel Corp.* 554 N.E.2d 833 (Ind. App. 1990), an Indiana Court of Appeals similarly held that a state mechanic's lien statute was preempted by ERISA. The statute provided that liens could be levied

on the interest of the owner of land on which laborers had performed work to the extent of the value of claims for labor performed or material provided. In deciding whether the mechanic's lien statute was preempted by ERISA as it applies to the fringe benefits provided in the laborer's collective bargaining agreement, the court stated that the laborer's were attempting to use the mechanic's lien statute to enforce conditions of their fringe benefits.

The court held that the Indiana mechanic's lien statute was preempted because it related to ERISA. It reasoned that:

> If laborers were allowed to recover wages and fringe benefits from [the owner of the property] then [the employer] and the fringe benefit funds would be affected; they would either have no further obligation to pay laborers, or laborers could receive a double payment windfall, provided [their employer] or the funds paid [the] laborers at some future time.

Edwards, 554 N.E. 2d at 835-36.

A recent Wisconsin Court of Appeals decision further demonstrates the uniformity with which courts approach this preemption issue. In *Plumbers Local No. 458 Holiday Vacation Fund v. Immel, Inc.*, 151 Wis. 2d 233, 445 N.W.2d 43 (1989), the court compared a Wisconsin construction lien law with the California trust fund lien procedure at issue in the instant case.

In determining that preemption was proper only under the California statute, the court noted significant differences between the two statutes. The factors which

proved decisive in favor of preemption were that the California statute applies to the collection of unpaid ERISA accounts, specifically refers to ERISA obligations, and creates a remedy for collection of ERISA obligations that does not exist under the federal act. Although finding that preemption of the Wisconsin statute was not proper, the court reasoned that under existing federal law, the California trust fund lien procedure clearly should be preempted.

These decisions make it abundantly clear that federal and state courts have uniformly interpreted the preemption provisions of ERISA when analyzing state mechanic's lien statutes. Consistent with this Court's holdings, the California Supreme Court and all other courts addressing the issue, have broadly interpreted the term "relate to" and concluded that trust fund mechanic's lien laws such as California Civil Code Section 3111 are preempted by ERISA. *Pilot Life*, 481 U.S. at 47-48. Because there is no conflict among the courts regarding the preemptive effect of ERISA on state mechanic's lien laws, the petition for Writ of Certiorari should be denied.

B. The Decision Of The California Supreme Court Is Consistent With Preemption Analysis As Set Forth In *Pilot Life Insurance Co. v. Dedeaux.*[2]

In *Pilot Life* it was established that the remedies provided for in Section 502 of ERISA, 29 U.S.C. § 1132, are

---

[2] In support of its argument that the California Supreme Court's decision ignores the framework for preemption analysis developed by this Court, CSCAC relies heavily on *Fort*

(Continued on following page)

exclusive and displace state laws which purport to create parallel remedies. The *Pilot Life* court stated that the detailed provisions of Section 502(a) "set forth a comprehensive civil enforcement scheme. . . . The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA plan participants and beneficiaries were free to obtain remedies under state law, that Congress rejected in ERISA. The six carefully integrated civil enforcement provisions found in Section 502 of the statute as finally enacted . . . provides strong evidence that Congress did not intend to authorize other remedies that it simply forgot to incorporate expressly." The Court went on to reason that "the expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop . . . would make little sense if the remedies available to ERISA participants and beneficiaries under Section 502(a) could be supplemented or supplanted by varying state laws." *Pilot Life*, 481 U.S. at 56.

The California Supreme Court closely followed this preemption analysis established by *Pilot Life*. It held that

---

(Continued from previous page)

Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 107 S.Ct. 2211 (1987). The decision in *Fort Halifax* did not, however, turn upon the definition and scope of the phrase "relate[s] to" as used in Section 514(a). Rather, the critical focus of *Fort Halifax* was the issue of what is to be defined as a *plan* for purposes of ERISA preemption. Because it is undisputed that CSCAC are employee benefit plans subject to the provisions of ERISA and that Section 3111 applies to employee benefit plans, the reasoning of *Fort Halifax* is irrelevant to the issues presented by this case.

CSCAC's action under Section 3111 is a civil action by a fiduciary to enforce the provisions of ERISA with regard to employer contributions and to enforce the terms of the plan. Because such a cause of action exists under Section 502(a) of ERISA, 29 U.S.C. § 1132(a), and Section 515 of ERISA, 29 U.S.C. § 1145, California Civil Code Section 3111 provided an additional cause of action to those already provided by ERISA. Consequently, California Civil Code Section 3111 was preempted.

Contrary to Petitioner's arguments, this Court was extremely clear in *Pilot Life* regarding the scope of ERISA preemption. Where ERISA provides a remedy under Section 502, any and all state causes of action and remedies are preempted. The California Supreme Court's decision, rather than ignore the framework for preemption analysis developed by this Court, completely embodies and accurately applies it in holding that Civil Code Section 3111 is preempted.

C. The California Mechanic's Lien Statute Is Preempted Regardless Of Its Underlying Legislative Intent.

Throughout its Petition for Writ of Certiorari, Petitioner bases its position on arguments which are completely inconsistent with and totally ignore the guidance of this Court in the area of ERISA preemption. CSCAC argues that this Court cannot hold that California Civil Code Section 3111 is preempted because such a ruling would "disrupt the California statutory scheme for protecting the wages and benefits of workmen." Petition at 20. CSCAC supports this proposition by asserting that

"[t]he interest of the State of California in providing a comprehensive remedy to protect the wage package, including fringe benefits, of workers who perform construction services would be gravely eroded if Civil Code Section 3111 is nullified by the preemptive force of federal law." Petition at 21.

This court has long held that legislative "good intentions" do not save a state law from preemption. *Mackey v. Lanier Collections Agency & Service, Inc.*, 486 U.S. 825, 108 S. Ct. 2182 (1988). Merely because Section 3111 may have been intended to provide a comprehensive remedy to protect the fringe benefits of workers, does not save it from preemption. As this Court has noted, "the preemption provision [of § 514(a)] . . . displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 739.

In sum, the fact that a California statutory scheme for protecting the wages and benefits of workmen may be disrupted by preemption of California Civil Code Section 3111, is completely irrelevant to preemption analysis.

VI

CONCLUSION

For all the foregoing reasons, El Capitan respectfully requests that this Petition for Writ of Certiorari be denied.

DATED: October 16, 1991

Respectfully submitted,

KAREN E. FORD*
GREGORY R. MEYER
LITTLER, MENDELSON, FASTIFF & TICHY
A PROFESSIONAL CORPORATION
650 California Street
20th Floor
San Francisco, California 94108-2693
(415) 433-1940

Attorneys for Respondent
El Capitan Development Company

*Counsel of Record